

**SALES AND USE TAX REVIEW COMMISSION
RECOMMENDATION PURSUANT TO P.L. 1999, C. 416**

BILL NUMBER:

S-1479

DATE OF INTRODUCTION:

March 2, 2006

SPONSOR:

Senator Connors

DATE OF RECOMMENDATION:

May 10, 2006

IDENTICAL BILL:

A-655

COMMITTEE:

Senate Commerce Committee

DESCRIPTION:

This Bill would exempt charges for the sale and servicing of medical alarm and emergency notification equipment as well as the telecommunications services provided in conjunction therewith.

ANALYSIS:

Current law imposes sales and use tax on the purchase of medical alarm and medical emergency monitoring systems as the sale of tangible personal property. This bill proposes to amend the medical exemption under N.J.S.A. 54:32B-8.1 to include the purchase of medical alarms and medical emergency monitoring systems acquired for medical reasons.

Customarily, medical alarm and emergency notification equipment and servicing is sold in combination with other devices and services such as fire and security. The exemption would only be administrable where the medical alarm elements were separately identified and priced. Since some of the equipment and services included in the combination are taxable the entire purchase would be taxable making this exemption useless.

Additionally, many alarm companies advertise that the equipment is free with a term contract for monitoring. These sorts of agreements would not qualify for exemption under the proposal as written.

The telecommunications aspect of the exemption proposal would likewise prove extremely difficult to administer because it is impossible to distinguish what purpose phone lines are used for. Associated monitoring fees are within the scope of taxable "telecommunications", as defined by NJSA 54:32B-2(cc) and, as such, these charges are currently subject to sales tax. This measure proposes to exclude, from the definition of taxable telecommunications, charges associated with the monitoring of these alarms and systems.

The telephone companies neither monitor telephone lines of consumers nor do they have the equipment to determine if phone lines are being used for medical purposes. Telephone companies cannot reasonably be expected to recognize whether a particular phone call is being used for medical purposes when they do not even have equipment to make such a determination.

There are no strong tax policy reasons to support this exemption. Enactment of special exemptions for purchases of socially desirable merchandise tend to create an increased demand for similar exemptions for other good, useful, necessary, or politically favored purchases. Such piecemeal exemptions alter the broad-based nature of the sales and use tax and reduce its credibility as a fairly administered and simple to understand tax. A broad-based tax, imposed with limited exemptions on a wide range of transactions, is easy to understand and administer, and is generally perceived as economically neutral and "fair". When imposed at a fairly low rate, the burden, per transaction, on the individual taxpayer, is relatively small, but the cumulative revenue generated can be enormous. An exemption for medical alarm and medical emergency notification services and equipment would save an individual taxpayer a fairly insignificant sum. However, the cumulative loss of revenue to the State could be substantial, leaving the State to find other means of generating the funds lost as a result of another exemption.

The exemption does not meet the test of simplicity, which requires that sales tax legislation be drafted in such a manner to allow vendors to ascertain their tax collection responsibilities simply by reviewing the provisions of the proposed legislation itself, without resort to interpretative regulations. The proposed Bill as written is unclear on what is exempt (i.e., the service or the equipment) or who is the customer (i.e., the medical place, alarm place or the person who is making the call). The Bill's lack of simplicity could result in a lot of taxpayer confusion and create needless litigation over terms that should be defined in the legislation for clarity. administrative and enforcement problems.

There are many devices that are designed to protect or warn individuals when life or property is threatened. The use of medical alarm and emergency notification devices and services, that are the subject of this Bill, effect the quality of life for the elderly and certainly should be recommended and encouraged. However, a tax exemption from a broad-based tax should not be based solely on the recognized necessity of the item sought to be exempt from taxation. The exemption will not cause potential users of medical alarm and emergency notification equipment and services to buy and utilize these devices and services because a sales tax exemption has been enacted. A better recommendation would be to exempt medical alarm and emergency notification equipment for senior citizens possibly expanding the exemption for medical equipment and supplies.

Further, and perhaps most important to note at this point in time, the language in NJSA 54:32B-8.1 has recently been amended to include new definitions pursuant to New Jersey's participation in the Streamlined Sales and Use Tax Agreement (SSUTA, adopted November 19, 2002, as amended January 13, 2006). One such new definition is for "durable medical equipment". The Division is currently awaiting a determination from

the Streamlined Governing Board defining what equipment falls within the scope of this definition. If medical alarms and/or monitoring systems are determined to be exempt by way of current language, this proposal would be moot.

The Commission would prefer to consider support of this exemption after the category of durable medical equipment has been reviewed and defined by the Governing Board of the Streamlined Sales and Use Tax Project.

RECOMMENDATION:

The Commission does not recommend enactment of this Bill.

COMMISSION MEMBERS FOR PROPOSAL: 0

COMMISSION MEMBERS AGAINST PROPOSAL: 8